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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,941	09/16/2003	Matthew J. Truman	8528-PA01	3858
27111	7590	10/21/2005	EXAMINER	
GORDON & REES LLP 101 WEST BROADWAY SUITE 1600 SAN DIEGO, CA 92101			PUROL, DAVID M	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/663,941	Applicant(s) TRUMAN, MATTHEW J.	
	Examiner David M. Purol	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

2

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1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 89,81,120.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to because the reference characters "88" and "98" have both been used to designate the filler member, wherein, only one particular reference numeral is to be used to designate a specific element.

Correction is required.

3. Claims 1-8,12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 5 and claim 2, line 4 each recite "the garage door" for which there is no antecedent basis.

Claim 15, line 1 recites "A façade for a roll-up door" which sets forth that the claims are drawn to the façade per se. However, lines 3-4 recite "being of predetermined shape and dimensions corresponding to the shape and dimensions of a panel of a roll-up door" which by comparing the shape and dimensions of the façade

Art Unit: 3634

with that of the roll-up imply that the roll-up door is an element of the invention.

Elements of an invention to which it is necessary to refer in order to define other elements of the invention are to be positively included in the claims.

4. Newly submitted claims 17 and 18 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1-8,12-16, drawn to a roll-up door, classified in class 160, subclass 201.
- II. Claims 17,18 drawn to a method of making a multiple section roll-up door classified in class 264, subclass 219+.

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as preforming the shape of the panel overlay to simulate a desired object.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17 and 18 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-5,12,15,16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Martinez et al. Martinez et al disclose a garage door comprising a plurality of hinged 21 sections 11 each having a panel 11c and a panel overlay 11a affixed thereto. The panel overlay 11a has a molded surface contour A,31,32.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez et al in view of Jella '085. While Martinez et al do not disclose the upper and lower faces of the panel overlays as defining a sloped gap, Jella '085 discloses a garage door comprising panel overlays having a sloped gap 80,84, wherein, to incorporate this teaching into the garage door of Martinez et al for the purpose of aesthetics would have been obvious to one of ordinary skill in the art.

Art Unit: 3634

7. Claims 6-8, 13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez et al in view of Thorn. Regarding the type of material from which the panel overlay is made from, it is a well settled issue that the selection of a known material based upon its suitability for the intended use would have been obvious to one of ordinary skill in the art. Even so, however, Thorn discloses that it is well known to use a urethane material for door constructions, wherein, to incorporate this teaching into the garage door of Martinez et al would have been obvious to one of ordinary skill in the art. While the applicant states that there is nothing in the teachings of Thorn which would suggest to one skilled in the field that the exterior exposed overlay members can be made of molded urethane foam material, it should be noted that both the references to Martinez et al and Thorn are from the applicant's field of endeavor, door constructions, and as such the applicant is presumed to have full knowledge of the prior art in their respective field of endeavor. As to claim 8, the use of nails as a fastening medium is a well known construction technique and as such cannot be relied upon for patentability.

8. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Dykes, Stansberry, Bengtsson, Vago, Jella '457.

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection as necessitated by the amendment further clarifying the structure of the door sections and the presentation of new claims 15-18.


Art Unit: 3634

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication should be directed to David M. Purol at telephone number (571) 272-6833.

  
David M. Purol  
Primary Examiner  
Art Unit 3634